

AMENDED IN ASSEMBLY APRIL 28, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1240

Introduced by Assembly Member Mullin

February 21, 2003

An act to amend Sections 1522, 1568.09, 1569.17, and 1596.871 of the Health and Safety Code, relating to care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1240, as amended, Mullin. Care facilities: criminal record clearances.

Existing law requires, as a condition of the State Department of Social Services or other licensing agency issuing a license, permit, or certificate of approval, as appropriate, for a person to operate or to provide direct care services in a community care facility, residential care facility for persons with a chronic life-threatening illness, residential care facility for the elderly, or day care facility, the fingerprinting of, and criminal record clearance for, applicants and persons to be employed by, reside at, or be present in the any of these facilities, except as specified. Existing law requires the Department of Justice to conduct the search for criminal history information, and also to have a 2nd set of fingerprints processed by the Federal Bureau of Investigation.

Existing law also authorizes the department to revoke a license, permit, or certificate for approval to operate or manage these facilities if any person employed by, residing at, or present in, in specified capacities, a facility listed above has been convicted of specified

offenses, unless the department has granted an exemption from disqualification.

This bill would authorize the department to take specified actions if it is determined, after licensure, the issuance of a special permit, or the granting of a certificate of approval to manage or operate a facility listed above, that a licensee, special permit holder, certificate holder, as appropriate, or person employed by, residing at, or present in the facility, in specified capacities, has been convicted of specified offenses.

Existing law requires that, subsequent to initial licensure a licensee must obtain fingerprinting and a criminal record clearance for any ~~persons~~ *person* who is employed by, resides at, or is present in, a facility.

This bill would require the department to issue against the licensee, special permitholder, or certificate holder a citation of deficiency and assess civil penalties, as specified, for failure to exclude specified persons convicted of specified offenses who have not obtained a criminal record clearance or an exemption, and would provide that the licensee's failure to exclude these persons would be grounds for disciplining the licensee.

Existing law requires the department to notify an individual with an arrest or conviction of his or her right to seek an exemption from disqualification.

This bill would eliminate that requirement and would authorize only an applicant for, or a holder of, a license, special permit, or certificate of approval to request an exemption on behalf of an individual with a record of specified convictions or arrests.

Existing law establishes a procedure by which the director may grant an exemption from disqualification for a license, special permit, or certificate of approval to manage or operate a facility listed above, or to ~~by~~ *be* employed by, reside in, or be present in a facility listed above. Existing law provides that an exemption shall not be granted if the conviction was for specified offenses.

This bill would expand that list of offenses.

This bill would also make various conforming changes and correct cross-references.

Because a violation of any law relating to these facilities is a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.



Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1522 of the Health and Safety Code is
2 amended to read:

3 1522. The Legislature recognizes the need to generate timely
4 and accurate positive fingerprint identification of applicants as a
5 condition of issuing licenses, permits, or certificates of approval
6 for persons to operate or provide direct care services in a
7 community care facility, foster family home, or a certified family
8 home of a licensed foster family agency. Therefore, the
9 Legislature supports the use of the fingerprint live-scan
10 technology, as identified in the long-range plan of the Department
11 of Justice for fully automating the processing of fingerprints and
12 other data by the year 1999, otherwise known as the California
13 Crime Information Intelligence System (CAL-CII), to be used for
14 applicant fingerprints. It is the intent of the Legislature in enacting
15 this section to require the fingerprints of those individuals whose
16 contact with community care clients may pose a risk to the clients'
17 health and safety.

18 (a) (1) Before issuing a license or special permit to any person
19 or persons to operate or manage a community care facility, and
20 before any person specified in subdivision (b) who is not exempted
21 from fingerprinting is employed by, resides at, or is present in a
22 community care facility, the State Department of Social Services
23 shall secure from an appropriate law enforcement agency criminal
24 history information to determine whether the applicant or any
25 other person specified in subdivision (b) who is not exempted from
26 fingerprinting has any of the following:

27 ~~(A) A conviction of a crime other than a minor traffic violation.~~

28 ~~(B) An arrest ever been convicted of a crime, other than an~~
29 ~~infraction, or arrested for any crime specified in Section 290 of the~~
30 ~~Penal Code, for violating Section 245 or 273.5 of the Penal Code,~~
31 ~~for violating subdivision (b) of Section 273a of the Penal Code, or,~~

1 prior to January 1, 1994, paragraph (2) of Section 273a of the Penal
2 Code.

3 ~~(C) A conviction of any crime for which the person has not~~
4 ~~been exonerated and for which the department may not grant an~~
5 ~~Code, or any crime for which the department cannot grant an~~
6 exemption from disqualification pursuant to subdivision (g).

7 (2) The criminal history information shall include the full
8 criminal record, if any, of those persons and *subsequent* arrest
9 information pursuant to Section 11105.2 of the Penal Code.

10 (3) Notwithstanding subdivision (k), neither the Department
11 of Justice or nor the State Department of Social Services may
12 charge a fee for the fingerprinting of an applicant for a license or
13 special permit to operate a facility providing nonmedical board,
14 room, and care for six or fewer children, or for obtaining a criminal
15 history of the applicant pursuant to this section.

16 (4) The following shall apply to the criminal record
17 information:

18 (A) If the State Department of Social Services finds that the
19 applicant, or any other person specified in subdivision (b) who is
20 not exempted from fingerprinting, has been convicted of a crime
21 ~~other than a minor traffic violation, or arrested for a crime~~
22 ~~specified in subparagraph (B) of paragraph (1), subject to~~
23 ~~subdivision (e), other than an infraction~~, the application shall be
24 denied, unless the director grants an exemption pursuant to
25 subdivision (g).

26 (B) If the department finds that the applicant, or any other
27 person specified in subdivision (b) who is not exempted from
28 fingerprinting, is awaiting trial for a crime other than a minor
29 traffic violation, the department may cease processing the
30 application until the conclusion of the trial or other disposition of
31 the case.

32 (C) If no criminal history information has been recorded, the
33 Department of Justice shall provide the applicant and the State
34 Department of Social Services with a statement of that fact.

35 (D) If the department finds after licensure or the issuance of a
36 special permit that the licensee, special permitholder, or any other
37 person specified in subdivision (b) who is not exempted from
38 fingerprinting, has been convicted of a crime other than a ~~minor~~
39 ~~traffic violation, or arrested for a crime specified in subparagraph~~
40 ~~(B) of paragraph (1), subject to subdivision (e), the license or an~~

infraction, the license or special permit may be revoked, unless the director grants an exemption pursuant to subdivision (g).

(E) In addition to the criminal records search required by this subdivision, an applicant for licensure ~~or for a special permit to operate or manage a community care facility~~ shall submit a second set of fingerprints to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation. If an applicant meets all of the conditions for licensure, except for the State Department of Social Services' receipt of the Federal Bureau of Investigation's criminal history information for the applicant, the department ~~may~~ *may, but is not required to*, issue a license or special permit if the applicant has signed and submitted a declaration, under penalty of perjury, that he or she has never been convicted of a crime in the United States, ~~other than a traffic infraction punishable pursuant to paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code, or arrested for a crime specified in subparagraph (B) of paragraph (1).~~ *other than an infraction*. If, after licensure or the granting of a special permit, the department determines, based on the results from the Federal Bureau of Investigation's criminal record search, that the licensee or special permitholder has a conviction for any crime ~~other than a minor traffic violation, or has been arrested for a crime specified in subparagraph (B) of paragraph (1), subject to subdivision (e)~~, *other than an infraction*, the department may revoke the license pursuant to Section 1550. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(F) In addition to the criminal records search required by this subdivision, each person specified in subdivision (b) who is not exempted from fingerprinting shall submit a second set of fingerprints to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation for records for that person. If any person specified in subdivision (b) who is not exempted from fingerprinting obtains either a criminal record clearance from the Department of Justice or an exemption from disqualification pursuant to subdivision (g) from the State Department of Social Services pending the department's receipt of the Federal Bureau of Investigation's criminal history information for that person, the department ~~may~~ *may, but is not required to*, allow that person to be employed by,

1 reside at, or be present, in the community care facility if the person
2 has signed and submitted to the department a declaration, under
3 penalty of perjury, that he or she has never been convicted of a
4 crime in the United States, other ~~than a traffic infraction~~
5 ~~punishable pursuant to paragraph (1) of subdivision (a) of Section~~
6 ~~42001 of the Vehicle Code or the crime for which the exemption~~
7 ~~from disqualification was granted, or arrested for a crime specified~~
8 ~~in subparagraph (B) of paragraph (1):~~ *than an infraction*. If, after
9 obtaining a criminal record clearance or exemption from
10 disqualification pursuant to subdivision (g) for a person specified
11 in subdivision (b) who is not exempted from fingerprinting, the
12 department determines, based on the results from the Federal
13 Bureau of Investigation's criminal record search, that the person
14 has a conviction ~~for~~ *of* any crime other than a ~~minor traffic~~
15 ~~violation, or has been arrested for a crime specified in~~
16 ~~subparagraph (B) of paragraph (1), subject to subdivision (e), the~~
17 *an infraction, the* department shall determine if the person should
18 be removed ~~or excluded, or both,~~ from the facility pursuant to
19 paragraph (3) of subdivision (c) until a decision on the exemption
20 from disqualification is rendered.

21 (G) If, after licensure or the granting of a special permit, the
22 department determines that the licensee or special permitholder or
23 any other person specified in subdivision (b) who is not exempted
24 from fingerprinting has a ~~conviction of an offense other than a~~
25 ~~minor traffic violation, or a record of arrest for any crime specified~~
26 ~~in subparagraph (B) of paragraph (1), subject to subdivision (e),~~
27 *criminal record*, the license may be revoked pursuant to Section
28 1550. The department may also suspend the license pending an
29 administrative hearing pursuant to Section 1550.5.

30 (b) (1) In addition to the applicant, this section shall be
31 applicable to criminal convictions and arrests of the following
32 persons:

33 (A) Adults responsible for administration or direct supervision
34 of staff.

35 (B) Any person, other than a client, residing in the facility.

36 (C) Any person who provides client assistance in dressing,
37 grooming, bathing, or personal hygiene. Any nurse assistant or
38 home health aide meeting the requirements of Section 1338.5 or
39 1736.6, respectively, who is not employed, retained, or contracted
40 by the licensee, and who has been certified or recertified on or after

July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the community care facility. The facility shall maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Section 1558.

(D) Any staff person, volunteer, or employee who has contact with the clients.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(F) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(2) The following persons are exempt from the requirements applicable under paragraph (1):

(A) A medical professional as defined in department regulations who holds a valid license or certification from the person's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee or special permiss holder if all of the following apply:

(i) The criminal record of the person has been cleared as a condition of licensure or certification by the person's governing California medical care regulatory entity.

(ii) The person is providing time-limited specialized clinical care or services.

(iii) The person is providing care or services within the person's scope of practice.

(iv) The person is not a community care facility licensee or an employee of the facility.

(B) A third-party repair person or similar retained contractor if all of the following apply:

1 (i) The person is hired for a defined, time-limited job.

2 (ii) The person is not left alone with clients.

3 (iii) When clients are present in the room in which the
4 repairperson or contractor is working, a staff person who has a
5 criminal record clearance or exemption is also present.

6 (C) Employees of a licensed home health agency and other
7 members of licensed hospice interdisciplinary teams who have a
8 contract with a client or resident of the facility and are in the
9 facility at the request of that client or resident's legal
10 decisionmaker. The exemption shall not apply to a person who is
11 a community care facility licensee, special permitholder, or an
12 employee of the facility.

13 (D) Clergy and other spiritual caregivers who are performing
14 services in common areas of the community care facility or who
15 are advising an individual client at the request of, or with the
16 permission of, the client or legal decisionmaker, are exempt from
17 fingerprint and criminal background check requirements imposed
18 by community care licensing. This exemption shall not apply to a
19 person who is a community care licensee, special permitholder, or
20 employee of the facility.

21 (E) Members of fraternal, service, or similar organizations who
22 conduct group activities for clients if all of the following apply:

23 (i) Members are not left alone with clients.

24 (ii) Members do not transport clients off the facility premises.

25 (iii) The same organization does not conduct group activities
26 for clients more often than defined by the department's
27 regulations.

28 (3) In addition to the exemptions in paragraph (2), the
29 following persons in foster family homes, certified family homes,
30 and small family homes are exempt from the requirements
31 applicable under paragraph (1):

32 (A) Adult friends and family of the licensee or special
33 permitholder who come into the home to visit for a length of time
34 no longer than defined by the department in regulations, provided
35 that the adult friends and family of the licensee or special
36 permitholder are not left alone with the foster children.

37 (B) Parents of a foster child's friends when the foster child is
38 visiting the friend's home and the friend, foster parent, or both are
39 also present.

(4) In addition to the exemptions specified in paragraph (2), the following persons in adult day care and adult day support centers are exempt from the requirements applicable under paragraph (1):

(A) Unless contraindicated by the client's individualized program plan (IPP) or needs and service plan, a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee or special permitholder. This exemption applies only if the person is visiting the client or providing direct care and supervision to the client.

(B) A volunteer if all of the following applies:

(i) The volunteer is supervised by the licensee or special permitholder or a facility employee with a criminal record clearance or exemption.

(ii) The volunteer is never left alone with clients.

(iii) The volunteer does not provide any client assistance with dressing, grooming, bathing, or personal hygiene other than washing of hands.

(5) (A) In addition to the exemptions specified in paragraph (2), the following persons in adult residential and social rehabilitation facilities, unless contraindicated by the client's individualized program plan (IPP) or needs and services plan, are exempt from the requirements applicable under paragraph (1): a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to that client.

(B) Nothing in this subdivision shall prevent a licensee or special permitholder from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

(6) Any person similar to those described in this subdivision, as defined by the department in regulations, is exempt from the requirements applicable under paragraph (1).

(c) (1) Any person specified in subdivision (b) who is not exempted from fingerprinting shall obtain either a criminal record clearance from the Department of Justice or an exemption from

1 disqualification pursuant to subdivision (g) from the State
2 Department of Social Services prior to his or her initial presence
3 in a facility. Any person specified in subdivision (b) who is not
4 exempted from fingerprinting shall be fingerprinted and shall sign
5 a declaration, under penalty of perjury, regarding any prior
6 ~~criminal conviction or any arrest for any crime specified in~~
7 ~~subparagraph (B) of paragraph (1) of subdivision (a).~~ *criminal*
8 *conviction*. The licensee or special permitholder shall submit these
9 fingerprints to the Department of Justice, along with a second set
10 of fingerprints for the purpose of searching the records of the
11 Federal Bureau of Investigation, or shall comply with paragraph
12 (1) of subdivision (h). These fingerprints shall be in a form
13 required by the State Department of Social Services or sent by
14 electronic transmission in a manner approved by the State
15 Department of Social Services and the Department of Justice for
16 the purpose of obtaining a permanent set of fingerprints, and shall
17 be submitted to the Department of Justice by the licensee or special
18 permitholder. A licensee's or a special permitholder's failure to
19 prohibit the initial presence in a facility of any person specified in
20 subdivision (b) who is not exempted from fingerprinting and who
21 has not received either a criminal record clearance or an exemption
22 from disqualification pursuant to subdivision (g) shall result in the
23 citation of a deficiency and the immediate assessment of civil
24 penalties, by the State Department of Social Services and against
25 the licensee or special permitholder, in the amount of one hundred
26 dollars (\$100) per violation per day, *for a maximum of 50 days*, and
27 also shall be grounds for disciplining the licensee pursuant to
28 Section 1550. A licensee's or a special permitholder's failure to
29 submit fingerprints to the Department of Justice or to comply with
30 paragraph (1) of subdivision (h), as required in this section, shall
31 result in the citation of a deficiency and the immediate assessment
32 of civil penalties, by the State Department of Social Services and
33 against the licensee or special permitholder, in the amount of one
34 hundred dollars (\$100) per violation per day, *for a maximum of 50*
35 *days*, and shall be grounds for disciplining the licensee pursuant
36 to Section 1550. The department may also assess civil penalties
37 against the licensee for continued violations as permitted by
38 Section 1548. The fingerprints shall then be submitted to the
39 Department of Justice for processing. Upon request of the licensee
40 or special permitholder, who shall enclose a self-addressed

1 stamped postcard for this purpose, the Department of Justice shall
2 verify receipt of the fingerprints.

3 (2) Within 14 calendar days of the receipt of the fingerprints,
4 the Department of Justice shall notify the State Department of
5 Social Services of the criminal history information, as provided
6 for in subdivision (a). If no criminal history information has been
7 recorded, the Department of Justice shall provide the licensee or
8 special permitholder and the State Department of Social Services
9 with a statement of that fact within 14 calendar days of receipt of
10 the fingerprints. Documentation of the individual's clearance or
11 exemption from disqualification pursuant to subdivision (g) shall
12 be maintained by the licensee or special permitholder and shall be
13 available for inspection. If new fingerprints are required for
14 processing, the Department of Justice shall, within 14 calendar
15 days from the date of receipt of the fingerprints, notify the licensee
16 or special permitholder that the fingerprints are required. The
17 Department of Justice shall notify the State Department of Social
18 Services, as required by Section 1522.04, and shall also notify the
19 licensee or special permitholder by mail, within 14 days of
20 electronic transmission of the fingerprints to the Department of
21 Justice, if the person has no criminal history recorded. A violation
22 of the regulations adopted pursuant to Section 1522.04 shall result
23 in the citation of a deficiency and an immediate assessment of civil
24 penalties, by the State Department of Social Services and against
25 the licensee or special permitholder, in the amount of one hundred
26 dollars (\$100) per violation per day, *for a maximum of 50 days*, and
27 shall be grounds for disciplining the licensee pursuant to Section
28 1550. The department may also assess civil penalties for continued
29 violations as permitted by Section 1548.

30 (3) Except for persons specified in subdivision (b) as exempt
31 from the criminal record clearance requirement, the licensee or
32 special permitholder shall endeavor to ascertain the previous
33 employment history of persons required to be fingerprinted under
34 subdivision (b). If it is determined by the State Department of
35 Social Services, on the basis of the fingerprints submitted to the
36 Department of Justice, that subsequent to obtaining a criminal
37 record clearance or exemption from disqualification pursuant to
38 subdivision (g), the person has been convicted of, or is awaiting
39 trial for, a sex offense against a minor, or has been convicted for
40 an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of

1 the Penal Code, or a felony, ~~or has been arrested for any crime~~
2 ~~specified in subparagraph (B) of paragraph (1) of subdivision (a),~~
3 ~~subject to subdivision (e), the~~ the State Department of Social
4 Services shall notify the licensee or special permitholder to act
5 immediately to terminate the person's employment, remove the
6 person from the community care facility, or bar the person from
7 entering the community care ~~facility, as appropriate.~~ facility. The
8 State Department of Social Services may subsequently grant an
9 exemption from disqualification pursuant to subdivision (g). If the
10 conviction was for another crime, except ~~a minor traffic violation~~
11 *an infraction*, the licensee or special permitholder shall, upon
12 notification by the department, act immediately to either (A)
13 terminate the person's employment, remove the person from the
14 community care facility, or bar the person from entering the
15 community care facility, as appropriate; or (B) seek an exemption
16 from disqualification pursuant to subdivision (g). The department
17 shall determine if the person shall be allowed to remain in the
18 facility until a decision on the exemption from disqualification is
19 rendered. A licensee's or special permitholder's failure to comply
20 with the department's prohibition of employment, contact with
21 clients, or presence in the facility as required by this paragraph
22 shall result in a citation of a deficiency and an immediate
23 assessment of civil penalties, by the department and against the
24 licensee or special permitholder, in the amount of one hundred
25 dollars (\$100) per violation per day, *for a maximum of 50 days*, and
26 shall be grounds for disciplining the licensee pursuant to Section
27 1550.

28 (4) The department may issue an exemption from
29 disqualification on its own motion pursuant to subdivision (g) if
30 the person's criminal history indicates that the person is of good
31 character based on the age, seriousness, and frequency of the
32 conviction or convictions. The department, in consultation with
33 interested parties, shall develop regulations to establish the criteria
34 to grant an exemption from disqualification pursuant to this
35 paragraph.

36 (5) Only an applicant for licensure or a licensee, or an applicant
37 for a special permit or a special permitholder, may request an
38 exemption pursuant to subdivision (g) on behalf of an individual
39 specified in subdivision (b) who is not exempt from fingerprinting.

(d) (1) Before issuing a license, special permit, or certificate of approval to any person or persons to operate or manage a foster family home or certified family home as described in Section 1506, the State Department of Social Services or other approving authority shall secure criminal history information from an appropriate law enforcement agency to determine whether the applicant or any person specified in subdivision (b) who is not exempted from fingerprinting has ever been convicted of a crime other than ~~a minor traffic violation~~ *an infraction* or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5 of the Penal Code, for violating subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime ~~for which the person has not been exonerated and for which the department may not~~ *for which the department cannot* grant an exemption from disqualification pursuant to subdivision (g).

(2) The criminal history information shall include the full criminal record, if any, of those persons and *subsequent* arrest information pursuant to Section 11105.2 of the Penal Code.

(3) Notwithstanding subdivision (k), neither the Department of Justice nor the State Department of Social Services may charge a fee for the fingerprinting of an applicant for a license, special permit, or certificate of approval described in this subdivision. The criminal history, if any, shall be taken into consideration when evaluating a prospective applicant.

(4) The following shall apply to the criminal history information:

(A) If the applicant or other persons specified in subdivision (b) who are not exempted from fingerprinting have any conviction or arrest that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied.

(B) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) who is not exempted from fingerprinting, is awaiting trial for a crime other than ~~a minor traffic violation, the~~ *than an infraction, the* department or other approving authority may cease processing the application until the conclusion of the trial or other disposition of the case.

(C) For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

(D) An applicant for a foster family home license or special permit, or for certification as a family home, and any other person specified in subdivision (b) who is not exempted from fingerprinting, shall submit a set of fingerprints to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation, in addition to the criminal records search required by subdivision (a). If an applicant meets all other conditions for licensure, for a special permit, or for certification, except the State Department of Social Services' receipt of the Federal Bureau of Investigation's criminal history information for the applicant and all persons described in subdivision (b) who are not exempted from fingerprinting, the department may issue a license or special permit, or the foster family agency may issue a certificate of approval, if the applicant, and each person described in subdivision (b) who is not exempted from fingerprinting, has signed and submitted a declaration, under penalty of perjury, that he or she has never been convicted of a crime in the United States, other than a traffic infraction punishable pursuant to paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code, or arrested for any crime specified in paragraph (1): *an infraction*. If, after licensure, the issuance of a special permit, or certification, the department determines that the licensee, special permitholder, certified foster parent, or any person specified in subdivision (b) who is not exempted from fingerprinting has a criminal history of any conviction or arrest as specified in this paragraph, subject to subdivision (e), the license may be revoked pursuant to Section 1550 and the certificate of approval revoked pursuant to subdivision (b) of Section 1534. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(5) Any person specified in this subdivision shall, as a part of the application, be fingerprinted and sign a declaration, under penalty of perjury, regarding any prior criminal convictions or arrests for any crime against a child, spousal or cohabitant abuse, or any crime for which the department ~~may not~~ *cannot* grant an exemption from disqualification pursuant to subdivision (g) if the

1 person was convicted, and shall submit these fingerprints to the
2 licensing agency or other approving authority.

3 (6) (A) *Any person specified in subdivision (b) who is not*
4 *exempted from fingerprinting shall obtain either a criminal record*
5 *clearance from the Department of Justice, or an exemption from*
6 *disqualification pursuant to subdivision (g) from the State*
7 *Department of Social Services, prior to his or her initial presence*
8 *in a facility. Any person specified in subdivision (b) who is not*
9 *exempted from fingerprinting shall be fingerprinted and shall sign*
10 *a declaration, under penalty of perjury, regarding any prior*
11 *criminal conviction. The foster family agency shall obtain*
12 *fingerprints from foster family homes and certified home*
13 *applicants, and from persons specified in subdivision (b) who are*
14 *not exempted from fingerprinting, and shall submit them directly*
15 *to the Department of Justice or send them by electronic*
16 *transmission in a manner approved by the State Department of*
17 *Social Services. A foster family home licensee or special*
18 *permitholder, certified family home, or foster family agency shall*
19 *submit these fingerprints to the Department of Justice, along with*
20 *a second set of fingerprints for the purpose of searching the records*
21 *of the Federal Bureau of Investigation, or shall comply with*
22 *paragraph (1) of subdivision (h), prior to the person's*
23 *employment, residence, or initial presence. investigation. A*
24 *licensee's, special permitholder's, or certificate holder's failure to*
25 *submit fingerprints to the Department of Justice, or to comply with*
26 *paragraph (1) of subdivision (h), as required in prohibit the initial*
27 *presence in a facility of any person specified in subdivision (b) who*
28 *is not exempted from fingerprinting and who has not received*
29 *either a criminal record clearance or an exemption from*
30 *disqualification pursuant to subdivision (g) this section; shall*
31 *result in a citation of a deficiency, and the immediate civil*
32 *penalties, by the department and against the licensee, special*
33 *permitholder, or certificate holder of one hundred dollars (\$100)*
34 *per violation per day, day, for a maximum of 50 days. The State*
35 *Department of Social Services may assess penalties for continued*
36 *violations, as permitted by Section 1548. The fingerprints shall*
37 *then be submitted to the State Department of Social Services for*
38 *processing.*

39 (B) Upon request of the licensee, special permitholder, or
40 certificate holder, who shall enclose a self-addressed envelope for

1 this purpose, the Department of Justice shall verify receipt of the
2 fingerprints. Within five working days of the receipt of the
3 criminal history information regarding criminal convictions or
4 arrests from the Department of Justice, the State Department of
5 Social Services shall notify the applicant of any criminal arrests or
6 convictions. If no arrests or convictions are recorded, the
7 Department of Justice shall provide the foster family home
8 licensee or special permitholder, the certified family home, or the
9 foster family agency with a statement of that fact concurrent with
10 providing the information to the State Department of Social
11 Services.

12 (7) If the State Department of Social Services finds that the
13 applicant, or any other person specified in subdivision (b) who is
14 not exempted from fingerprinting, has been convicted of a crime
15 ~~other than a minor traffic violation or arrested for any crime~~
16 ~~specified in paragraph (1) other than an infraction~~, the application
17 shall be denied, unless the director grants an exemption pursuant
18 to subdivision (g).

19 (8) If the State Department of Social Services finds after
20 licensure or the granting of a special permit or a certificate of
21 approval that the licensee, special permitholder, certified foster
22 parent, or any other person specified in subdivision (b) who is not
23 exempt from fingerprinting, has been convicted of a crime other
24 ~~than a minor traffic violation, or arrested for any crime specified~~
25 ~~in paragraph (1), the license, an infraction, the license, special~~
26 ~~permit, or certificate of approval may be revoked by the~~
27 ~~department or the foster family agency, whichever is applicable,~~
28 ~~unless the director grants an exemption pursuant to subdivision~~
29 ~~(g). A licensee's, special permitholder's, or certificate holder's~~
30 ~~failure to comply with the department's prohibition of~~
31 ~~employment, contact with clients, or presence in the facility as~~
32 ~~required by paragraph (3) of subdivision (c) shall result in a~~
33 ~~citation of a deficiency, and the immediate assessment of a civil~~
34 ~~penalty, by the department and against the licensee, special~~
35 ~~permitholder, or certificate holder of one hundred dollars (\$100)~~
36 ~~per violation per day. The department may also assess penalties for~~
37 ~~continued violations, pursuant to Section 1548. A licensee's,~~
38 ~~special permitholder's, or certificate holder's failure to comply~~
39 ~~with the department's prohibition of employment, contact with~~

1 ~~clients, or presence in the facility shall also~~ be grounds for
2 disciplining the licensee pursuant to Section 1550.

3 (e) The State Department of Social Services shall not use a
4 record of arrest to deny, revoke, or terminate any application,
5 license, special permit, certificate of approval, employment, or
6 residence unless the department investigates the incident and
7 secures evidence, whether or not related to the incident of arrest,
8 that is admissible in an administrative hearing to establish conduct
9 by the person that may pose a risk to the health and safety of any
10 person who is or may become a client. The department is
11 authorized to obtain any arrest or conviction records or reports
12 from any law enforcement agency as necessary to the performance
13 of its duties to inspect, license, issue a special permit for, and
14 investigate community care facilities and individuals associated
15 with a community care facility.

16 (f) (1) For purposes of this section or any other provision of
17 this chapter, a conviction means a plea or verdict of guilty or a
18 conviction following a plea of nolo contendere. Any action that the
19 State Department of Social Services is permitted to take following
20 the establishment of a conviction may be taken when the time for
21 appeal has elapsed, when the judgment of conviction has been
22 affirmed on appeal, or when an order granting probation is made
23 suspending the imposition of sentence, notwithstanding a
24 subsequent order pursuant to Sections 1203.4 and 1203.4a of the
25 Penal Code permitting the person to withdraw his or her plea of
26 guilty and to enter a plea of not guilty, or setting aside the verdict
27 of guilty, or dismissing the accusation, information, or indictment.
28 For purposes of this section or any other provision of this chapter,
29 the record of a conviction, or a copy thereof certified by the clerk
30 of the court or by a judge of the court in which the conviction
31 occurred, shall be conclusive evidence of the conviction. For
32 purposes of this section or any other provision of this chapter, the
33 arrest disposition report certified by the Department of Justice, or
34 documents admissible in a criminal action pursuant to Section
35 969b of the Penal Code, shall be prima facie evidence of the
36 conviction, notwithstanding any other provision of law
37 prohibiting the admission of these documents in a civil or
38 administrative action.

39 (2) For purposes of this section or any other provision of this
40 chapter, the department shall consider criminal convictions from

1 another state or federal court, or arrests from another state or by
2 any federal agency, as if the criminal offense was committed in this
3 state.

4 (g) (1) After review of the record, the director may grant an
5 exemption from disqualification for a license or special permit as
6 specified in subdivision (a), or for a license, special permit, or
7 certificate of approval as specified in subdivision (d), or for
8 employment, residence, or presence in a community care facility
9 as specified in subdivision (c), if the director has substantial and
10 convincing evidence to support a reasonable belief that the
11 applicant or other person convicted of, ~~or arrested for,~~ the crime
12 is of such good character as to justify issuance of the license,
13 special permit, or certificate of approval, or the granting of an
14 exemption pursuant to this subdivision. Except as otherwise
15 provided in this subdivision, no exemption shall be granted
16 pursuant to this subdivision if the conviction was for any of the
17 following offenses:

18 (A) (i) An offense specified in Section 220, subdivision (b) of
19 Section 237, Section 243.4, Section 246, Section 264.1, Section
20 266a, Section 266e, Section 273a, Section 273ab, Section 273d,
21 subdivision (e) of Section 273.5, Section 288, or Section 289, of
22 the Penal Code, any ~~conviction for which the person is required to~~
23 ~~register as a sex offender pursuant to Section~~ *offense listed in*
24 *Section 290 of the Penal Code, any conviction for which the court*
25 *ordered the individual to register as a sex offender pursuant to*
26 *Section 290 of the Penal Code, Section 368, or subdivision (b) of*
27 *Section 417, of the Penal Code, a conviction of any crime against*
28 ~~an individual~~ *specified in subdivision (c) of Section 667.5 of the*
29 *Penal Code, or any crime of violence specified in any regulation.*

30 (ii) Notwithstanding clause (i), the director may grant an
31 exemption regarding the conviction for an offense described in
32 paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5
33 of the Penal Code, if the ~~applicant, employee, employee or~~
34 ~~prospective employee~~ *has been rehabilitated as provided in*
35 *Section 4852.03 of the Penal Code, has maintained the conduct*
36 *required in Section 4852.05 of the Penal Code for at least 10 years,*
37 *and has the recommendation of the district attorney representing*
38 ~~the applicant's, employee's, or prospective employee's county of~~
39 ~~employee's county of~~ *residence, or if the applicant, employee,*
40 *employee or prospective employee has received a certificate of*

1 rehabilitation pursuant to Chapter 3.5 (commencing with Section
2 4852.01) of Title 6 of Part 3 of the Penal Code.

3 (B) A felony offense specified in Section 729 of the Business
4 and Professions Code or in Section 206, Section 215, subdivision
5 (a) of Section 347, subdivision (b) of Section 417, or subdivision
6 (a) of Section 451, of the Penal Code.

7 (C) An offense specified in Section 11379.6.

8 (D) First degree ~~burglary specified in Sections 459 and 460 of~~
9 ~~the Penal Code.~~ *burglary.*

10 (2) The department shall not prohibit a person from being
11 employed by or from having contact with clients in a facility on the
12 basis of a denied criminal record exemption request or arrest
13 information unless the department complies with the requirements
14 of Section 1558.

15 (h) (1) For purposes of compliance with this section, the State
16 Department of Social Services may permit an individual to
17 transfer a current criminal record clearance, as defined in
18 subdivision (a), from one facility to another, as long as the criminal
19 record clearance has been processed through a state licensing
20 district office, and is being transferred to another facility licensed
21 by a state licensing district office. The request shall be in writing
22 to the department, and shall include a copy of the person's driver's
23 license or valid identification card issued by the Department of
24 Motor Vehicles, or a valid photo identification issued by another
25 state or the United States government if the person is not a
26 California resident. Upon request of the licensee, who shall
27 enclose a self-addressed envelope for this purpose, the department
28 shall verify whether the individual has a clearance that can be
29 transferred.

30 (2) The department shall hold criminal record clearances in its
31 active files for a minimum of two years after a person is no longer
32 employed by, residing at, or present in a licensed facility in order
33 for the criminal record clearance to be transferred.

34 (i) The full criminal history obtained for purposes of this
35 section may be used by the department or by a licensed adoption
36 agency as a clearance required for adoption purposes.

37 (j) If a licensee, special permitholder, certificate holder, or
38 facility is required by law to deny employment or to terminate
39 employment of any employee based on written notification from
40 the department that the employee has a prior criminal conviction,

1 or an arrest for any crime specified in subparagraph (B) of
2 paragraph (1) of subdivision (a), or is determined unsuitable for
3 employment under Section 1558, the licensee, special
4 permitholder, certificate holder, or facility shall not incur civil
5 liability or unemployment insurance liability as a result of that
6 denial or termination.

7 (k) The State Department of Social Services may charge a fee
8 for the costs of processing a set of live-scan fingerprints.

9 SEC. 2. Section 1568.09 of the Health and Safety Code is
10 amended to read:

11 1568.09. It is the intent of the Legislature in enacting this
12 section to require the fingerprints of those individuals whose
13 contact with residents of residential care facilities for persons with
14 a chronic, life-threatening illness may pose a risk to the residents'
15 health and safety.

16 Therefore, the Legislature supports the use of the fingerprint
17 live-scan technology, as identified in the long-range plan of the
18 Department of Justice for fully automating the processing of
19 fingerprints and other data by the year 1999, otherwise known as
20 the California Crime Information Intelligence System (CAL-CII),
21 to be used for applicant fingerprints. It is the intent of the
22 Legislature, in enacting this section, to require the fingerprints of
23 those individuals whose contact with community care clients may
24 pose a risk to the clients' health and safety.

25 (a) (1) Before issuing a license to any person or persons to
26 operate or manage a residential care facility, and before any person
27 specified in subdivision (b) who is not exempted from
28 fingerprinting is employed by, resides at, or is present in a
29 residential care facility for persons, with a chronic,
30 life-threatening illness, the department shall secure from an
31 appropriate law enforcement agency criminal history information
32 to determine whether the applicant or any other person specified
33 in subdivision (b) who is not exempted from fingerprinting has ~~any~~
34 ~~of the following:~~

35 ~~(A) A conviction of a crime other than a minor traffic violation.~~

36 ~~(B) An arrest ever been convicted of a crime other than an~~
37 ~~infraction, or arrested~~ for any crime specified in Section 290 of the
38 Penal Code, for violating Section 245 or 273.5 of the Penal Code,
39 for violating subdivision (b) of Section 273a of the Penal Code, or,

1 prior to January 1, 1994, paragraph (2) of Section 273a of the Penal
2 Code.

3 ~~(C) A conviction Code, or convicted of any crime for which the~~
4 ~~person has not been exonerated and for which the department may~~
5 ~~not grant an exemption from the department cannot grant an exemption from~~
6 disqualification pursuant to subdivision (f).

7 (2) The criminal history information shall include the full
8 criminal record if any, of those persons, and arrest information
9 pursuant to Section 11105.2 of the Penal Code.

10 (3) The following shall apply to the criminal record
11 information:

12 (A) If the department finds that the applicant or any other
13 person specified in subdivision (b) who is not exempted from
14 fingerprinting has been convicted of a crime, other than a ~~minor~~
15 ~~traffic violation, or arrested for a crime specified in subparagraph~~
16 ~~(B) of paragraph (1), subject to subdivision (e), an infraction, the~~
17 application shall be denied, unless the director grants an
18 exemption from disqualification pursuant to subdivision (f).

19 (B) If the department finds that the applicant, or any other
20 person specified in subdivision (b) who is not exempted from
21 fingerprinting is awaiting trial for a crime other than a minor traffic
22 violation, the department may cease processing the application
23 until the conclusion of the trial or other deposition of the case.

24 (C) If no criminal history information has been recorded, the
25 Department of Justice shall provide the applicant and the State
26 Department of Social Services with a statement of that fact.

27 (D) If the State Department of Social Services finds after
28 licensure that the licensee, or any other person specified in
29 subdivision (b) who is not exempted from fingerprinting, has been
30 convicted of a crime other than a ~~minor traffic violation, or~~
31 ~~arrested for a crime specified in subparagraph (B) of paragraph (1),~~
32 ~~subject to subdivision (e), the license may be an infraction, the~~
33 ~~license may be~~ revoked, unless the director grants an exemption
34 pursuant to subdivision (f).

35 (E) In addition to the criminal records search required by this
36 subdivision, an applicant for licensure shall submit to the
37 Department of Justice a second set of fingerprints for the purpose
38 of searching the records of the Federal Bureau of Investigation. If
39 an applicant meets all other conditions for licensure, except for the
40 State Department of Social Services' receipt of the Federal Bureau

1 of Investigation's criminal history information for the applicant,
2 the department ~~may~~ *may, but is not required to*, issue a license if
3 the applicant has signed and submitted a declaration, under penalty
4 of perjury, that he or she has never been convicted of a crime in the
5 United States, ~~other than a traffic infraction punishable pursuant~~
6 ~~to paragraph (1) of subdivision (a) of Section 42001 of the Vehicle~~
7 ~~Code, or arrested for a crime specified in subparagraph (B) of~~
8 ~~paragraph (1), other than an infraction.~~ If, after licensure, the
9 department determines, based on the results from the Federal
10 Bureau of Investigation's criminal record search, that the licensee
11 has a conviction for any crime other than ~~a minor traffic violation,~~
12 ~~or has been arrested for a crime specified in subparagraph (B) of~~
13 ~~paragraph (1), subject to subdivision (c), an infraction,~~ the
14 department ~~may~~ *then* revoke the license pursuant to Section
15 1568.082. The department may also suspend the license pending
16 an administrative hearing pursuant to Section 1568.082.

17 (F) In addition to the criminal records search required by this
18 subdivision, each person specified in subdivision (b) who is not
19 exempted from fingerprinting shall submit a second set of
20 fingerprints to the Department of Justice for the purpose of
21 searching the criminal records of the Federal Bureau of
22 Investigation for records for that person. If any person specified
23 in subdivision (b) who is not exempted from fingerprinting obtains
24 either a criminal record clearance from the Department of Justice
25 or an exemption from disqualification pursuant to subdivision (f)
26 from the State Department of Social Services pending the
27 department's receipt of the Federal Bureau of Investigation's
28 criminal history information for the person, the department ~~may~~
29 *may, but is not required to*, allow that person to be employed by,
30 reside at, or be present in, the residential care facility if the person
31 has signed and submitted to the department a declaration, under
32 penalty of perjury, that he or she has never been convicted of a
33 crime in the United States, ~~other than a traffic infraction~~
34 ~~punishable pursuant to paragraph (1) of subdivision (a) of Section~~
35 ~~42001 of the Vehicle Code or the crime for which the exemption~~
36 ~~from disqualification was granted, or arrested for any crime~~
37 ~~specified in subparagraph (B) of paragraph (1), than an infraction.~~
38 If, after obtaining a criminal record clearance or exemption from
39 disqualification pursuant to subdivision (f) for a person specified
40 in subdivision (b) who is not exempted from fingerprinting, the

department determines, based on the results from the Federal Bureau of Investigation's criminal record search, that the person has a conviction for any crime other than ~~a minor traffic violation, or has been arrested for a crime specified in subparagraph (B) of paragraph (1), subject to subdivision (c), the~~ *an infraction, the* department shall determine if the person should be removed or excluded, or both, from the facility pursuant to paragraph (4) of subdivision (c) until a decision on the exemption from disqualification is rendered.

(G) If, after licensure, the department determines that the licensee or person specified in subdivision (b) who is not exempted from fingerprinting has a ~~conviction of an offense other than a minor traffic violation, or a record of arrest for any crime specified in subparagraph (B) of paragraph (1), subject to subdivision (c),~~ *criminal record*, the license may be revoked pursuant to subdivision (a) of Section ~~1568.082~~ *1568.082, or the person may be excluded from the facility pursuant to Section 1568.092.* The department may also suspend the license pending an administrative hearing pursuant to subdivision (b) of Section 1568.082.

(b) In addition to the applicant, the provisions of this section shall be applicable to criminal convictions and arrests of the following persons:

(1) Adults responsible for administration or direct supervision of staff of the facility.

(2) Any person, other than a resident, residing in the facility.

(3) Any person who provides resident assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the residential care facility for persons with chronic, life-threatening illness. The facility shall maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this

1 paragraph restricts the right of the department to exclude a
2 certified nurse assistant or certified home health aide from a
3 licensed residential care facility for persons with chronic,
4 life-threatening illness pursuant to Section 1568.092.

5 (4) (A) Any staff person, volunteer, or employee who has
6 contact with the residents.

7 (B) A volunteer shall be exempt from the requirements of this
8 subdivision if he or she is a relative, significant other, or close
9 friend of a client receiving care in the facility and the volunteer
10 does not provide direct care and supervision of residents. A
11 volunteer who provides direct care and supervision shall be
12 exempt if the volunteer is a resident's spouse, significant other,
13 close friend, or family member and provides direct care and
14 supervision to that resident only at the request of the resident. The
15 department may define in regulations persons similar to those
16 described in this subparagraph who may be exempt from the
17 requirements of this subdivision.

18 (5) If the applicant is a firm, partnership, association, or
19 corporation, the chief executive officer or other person serving in
20 that capacity.

21 (6) Additional officers of the governing body of the applicant,
22 or other persons with a financial interest in the applicant, as
23 determined necessary by the department by regulation. The
24 criteria used in the development of these regulations shall be based
25 on the person's capability to exercise substantial influence over the
26 operation of the facility.

27 (c) (1) (A) Any person specified in subdivision (b) who is not
28 exempted from fingerprinting shall obtain either a criminal record
29 clearance from the Department of Justice or an exemption from
30 disqualification pursuant to subdivision (f) from the State
31 Department of Social Services prior to his or her initial presence
32 in a residential care facility. Any person specified in subdivision
33 (b) who is not exempted from fingerprinting shall be fingerprinted
34 and shall sign a declaration, under penalty of perjury, regarding
35 any prior criminal ~~or any arrest for any crime specified in~~
36 ~~subparagraph (B) of paragraph (1) of subdivision (a). The~~
37 ~~convictions. The~~ licensee shall submit these fingerprints to the
38 Department of Justice, along with a second set of fingerprints, for
39 the purpose of searching the records of the Federal Bureau of

Investigation, or shall comply with paragraph (1) of subdivision (g).

(B) These fingerprints shall be in a form required by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints and submitted to the Department of Justice by the licensee or sent by electronic transmission in a manner approved by the State Department of Social Services. A licensee's failure to prohibit the initial presence in a facility of any person specified in subdivision (b) who is not exempted from fingerprinting and who has not received either a criminal record clearance or an exemption from disqualification pursuant to subdivision (f) shall result in the citation of a deficiency and the immediate assessment of civil penalties, by the State Department of Social Services and against the licensee, in the amount of one hundred dollars (\$100) per violation per day, *for a maximum of 50 days*, and also shall be grounds for disciplining the licensee pursuant to Section 1550. A licensee's failure to submit fingerprints to the Department of Justice, or to comply with paragraph (1) of subdivision (g), as required in this section, shall result in the citation of a deficiency and an immediate assessment of civil penalties, by the State Department of Social Services and against the licensee, in the amount of one hundred dollars (\$100) per violation per day, *for a maximum of 50 days*, and shall be grounds for disciplining the licensee pursuant to Section 1568.082. The department may assess civil penalties against the licensee for continued violations as allowed in Section 1568.0822. The fingerprints shall then be submitted to the Department of Justice for processing. The licensee shall maintain and make available for inspection documentation of the individual's clearance or exemption.

(2) A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties, by the State Department of Social Services and against the licensee, in the amount of one hundred dollars (\$100) per violation per ~~day~~ *day, for a maximum of 50 days*, and shall be grounds for disciplining the licensee pursuant to Section 1568.082. The department may also assess civil penalties for continued violations as permitted by Section 1568.0822.

1 (3) Within 14 calendar days of the receipt of the fingerprints,
2 the Department of Justice shall notify the State Department of
3 Social Services of the criminal history information, as provided
4 for in this subdivision. If no criminal history information has been
5 recorded, the Department of Justice shall provide the licensee and
6 the State Department of Social Services with a statement of that
7 fact within 14 calendar days of receipt of the fingerprints. If new
8 fingerprints are required for processing, the Department of Justice
9 shall, within 14 calendar days from the date of receipt of the
10 fingerprints, notify the licensee that the fingerprints are required.
11 The Department of Justice shall notify the department, as required
12 by ~~that section~~, *Section 1522.04*, and shall notify the licensee by
13 mail within 14 days of electronic transmission of the fingerprints
14 to the Department of Justice, if the person has no criminal history
15 record.

16 (4) Except for persons specified in subdivision (b) as exempt
17 from the criminal record clearance requirement, the licensee shall
18 endeavor to ascertain the previous employment history of persons
19 required to be fingerprinted under subdivision (b). If it is
20 determined by the State Department of Social Services, on the
21 basis of the fingerprints submitted to the Department of Justice,
22 that subsequent to obtaining a criminal record clearance or
23 exemption from disqualification pursuant to subdivision (f), the
24 person has been convicted of a sex offense against a minor, an
25 offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the
26 Penal Code, or a felony, ~~or has been arrested for any crime~~
27 ~~specified in subparagraph (B) of paragraph (1) of subdivision (a),~~
28 ~~subject to subdivision (e)~~, the department shall notify the licensee
29 to act immediately to terminate the person's employment, remove
30 the person from the residential care facility, or bar the person from
31 entering the residential care ~~facility, as appropriate.~~ *facility*. The
32 department may subsequently grant an exemption from
33 disqualification pursuant to subdivision (f). If the conviction was
34 for another crime, ~~except a minor traffic violation, an infraction,~~
35 the licensee shall, upon notification by the department, act
36 immediately to either (A) terminate the person's employment,
37 remove the person from the residential care facility, or bar the
38 person from entering the residential care facility, as appropriate;
39 or (B) seek an exemption from disqualification pursuant to
40 subdivision (f). The department shall determine if the person shall

1 be allowed to remain in the facility until a decision on the
2 exemption from disqualification is rendered. A licensee's failure
3 to comply with the department's prohibition of employment,
4 contact with clients, or presence in the facility as required by this
5 paragraph shall result in a citation of a deficiency and an
6 immediate assessment of civil penalties, by the department and
7 against the licensee, in the amount of one hundred dollars (\$100)
8 per violation per day, *for a maximum of 50 days*, and shall be
9 grounds for disciplining the licensee pursuant to Section
10 1568.082.

11 (5) The department may issue an exemption on its own motion
12 pursuant to subdivision (f) if the person's criminal history
13 indicates that the person is of good character based on the age,
14 seriousness, and frequency of the conviction or convictions. The
15 department, in consultation with interested parties, shall develop
16 regulations to establish the criteria to grant an exemption pursuant
17 to this paragraph.

18 (6) Only an applicant for licensure or a licensee may request
19 an exemption from disqualification pursuant to subdivision (f) on
20 behalf of an individual specified in subdivision (b) who is not
21 exempt from fingerprinting.

22 (d) (1) For purposes of this section or any other provision of
23 this chapter, a conviction means a plea or verdict of guilty or a
24 conviction following a plea of nolo contendere. Any action that the
25 department is permitted to take following the establishment of a
26 conviction may be taken when the time for appeal has elapsed,
27 when the judgment of conviction has been affirmed on appeal, or
28 when an order granting probation is made suspending the
29 imposition of the sentence, notwithstanding a subsequent order
30 pursuant to Sections 1203.4 and 1203.4a of the Penal Code
31 permitting that person to withdraw his or her plea of guilty and to
32 enter a plea of not guilty, setting aside the verdict of guilty, or
33 dismissing the accusation, information, or indictment. For
34 purposes of this chapter, the record of a conviction, or a copy
35 thereof certified by the clerk of the court or by a judge of the court
36 in which the conviction occurred, shall be conclusive evidence of
37 the conviction. For purposes of this section or any other provision
38 of this chapter, the arrest disposition report certified by the
39 Department of Justice, or documents admissible in a criminal
40 action pursuant to Section 969b of the Penal Code, shall be prima

1 facie evidence of the conviction, notwithstanding any other
2 provision of law prohibiting the admission of these documents in
3 a civil or administrative action.

4 (2) For purposes of this section or any other provision of this
5 chapter, the department shall consider criminal convictions from
6 another state or federal court, or arrests from another state or by
7 any federal agency, as if the criminal offense was committed in this
8 state.

9 (e) The State Department of Social Services shall not use a
10 record of arrest to deny, revoke, or terminate any application,
11 license, employment, or residence unless the department
12 investigates the incident and secures evidence, whether or not
13 related to the incident of arrest, that is admissible in an
14 administrative hearing to establish conduct by the person that may
15 pose a risk to the health and safety of any person who is or may
16 become a client. The department is authorized to obtain any arrest
17 or conviction records or reports from any law enforcement agency
18 as necessary to the performance of its duties to inspect, license, and
19 investigate residential care facilities for persons with a chronic,
20 life-threatening illness and individuals associated with a
21 residential care facility for persons with a chronic, life-threatening
22 illness.

23 (f) (1) After review of the record, the director may grant an
24 exemption from disqualification for a license as specified in
25 subdivision (a), or for employment, residence, or presence in a
26 residential care facility as specified in subdivision (c), if the
27 director has substantial and convincing evidence to support a
28 reasonable belief that the applicant or other person convicted of,
29 ~~or arrested for,~~ the crime is of such good character as to justify
30 issuance of the license or the granting of an exemption pursuant to
31 this subdivision. However, no exemption shall be granted pursuant
32 to this subdivision if the conviction was for any of the following
33 offenses:

34 (A) An offense specified in Section 220, subdivision (b) of
35 Section 237, Section 243.4, Section 246, Section 264.1, Section
36 266a, Section 266e, Section 273a, Section 273ab, Section 273d,
37 subdivision (e) of Section 273.5, Section 288, or Section 289, of
38 the Penal Code, any ~~conviction for which the person is required to~~
39 ~~register as a sex offender pursuant to offense listed in Section 290~~
40 *of the Penal Code, any conviction for which the court ordered the*

1 *individual to register as a sex offender pursuant to Section 290 of*
2 *the Penal Code, Section 368, or subdivision (b) of Section 417, of*
3 *the Penal Code, a conviction of any crime against an individual*
4 *specified in subdivision (c) of Section 667.5 of the Penal Code, or*
5 *any crime of violence specified in any regulation.*

6 (B) A felony offense specified in Section 729 of the Business
7 and Professions Code or in Section 206, Section 215, subdivision
8 (a) of Section 347, or subdivision (a) of Section 451, of the Penal
9 Code.

10 (C) An offense specified in Section 11379.6.

11 (D) First degree burglary specified in Sections 459 and 460 of
12 ~~the Penal Code.~~ *burglary.*

13 (2) The department shall not prohibit a person from being
14 employed by or from having contact with clients in a facility on the
15 basis of a denied criminal record exemption request or arrest
16 information unless the department complies with the requirements
17 of Section 1568.092.

18 (g) (1) For purposes of compliance with this section, the State
19 Department of Social Services may permit an individual to
20 transfer a current criminal record clearance, as defined in
21 subdivision (a), from one facility to another, as long as the criminal
22 record clearance has been processed through a state licensing
23 district office, and is being transferred to another facility licensed
24 by a state licensing district office. The request shall be in writing
25 to the department, and shall include a copy of the person's driver's
26 license or valid identification card issued by the Department of
27 Motor Vehicles, or a valid photo identification issued by another
28 state or the United States government if the person is not a
29 California resident. Upon request of the licensee, who shall
30 enclose a self-addressed stamped envelope for this purpose, the
31 department shall verify whether the individual has a clearance that
32 can be transferred.

33 (2) The department shall hold criminal record clearances in its
34 active files for a minimum of two years after a person is no longer
35 employed by, residing at, or present in a licensed facility in order
36 for the criminal record clearance to be transferred.

37 (h) If a licensee or facility is required by law to deny
38 employment or to terminate employment of any employee based
39 on written notification from the state department that the employee
40 has a prior criminal conviction, or has an arrest for any crime

1 specified in subparagraph (B) of paragraph (1) of subdivision (a),
2 or is determined unsuitable for employment under Section
3 1568.092, the licensee or facility shall not incur civil liability or
4 unemployment insurance liability as a result of that denial or
5 termination.

6 (i) The Department of Justice shall charge a fee sufficient to
7 cover its cost in providing services to comply with the 14-day
8 requirement contained in subdivision (c) for provision to the
9 department of criminal history information.

10 SEC. 3. Section 1569.17 of the Health and Safety Code is
11 amended to read:

12 1569.17. The Legislature recognizes the need to generate
13 timely and accurate positive fingerprint identification of
14 applicants as a condition of issuing licenses, permits, or
15 certificates of approval for persons to operate or provide direct
16 care services in a residential care facility for the elderly. The
17 Legislature supports the use of the fingerprint live-scan
18 technology, as identified in the long-range plan of the Department
19 of Justice for fully automating the processing of fingerprints and
20 other data by the year 1999. It is the intent of the Legislature in
21 enacting this section to require the fingerprints of those individuals
22 whose contact with clients of residential care facilities for the
23 elderly may pose a risk to the clients' health and safety.

24 (a) (1) Before issuing a license or special permit to any person
25 or persons to operate or manage a residential care facility for the
26 elderly, and before any person specified in subdivision (b) who is
27 not exempted from fingerprinting is employed by, resides at, or is
28 present in a residential care facility for the elderly, the State
29 Department of Social Services shall secure from an appropriate
30 law enforcement agency criminal history information to
31 determine whether the applicant or any other person specified in
32 subdivision (b) who is not exempted from fingerprinting has ~~any~~
33 ~~of the following:~~

34 ~~(A) A conviction of a crime other than a minor traffic violation.~~

35 ~~(B) An arrest ever been convicted of a crime other than an~~
36 ~~infraction, or arrested for any crime specified in Section 290 of the~~
37 ~~Penal Code, for violating Section 245 or 273.5 of the Penal Code,~~
38 ~~for violating subdivision (b) of Section 273a of the Penal Code, or,~~
39 ~~prior to January 1, 1994, paragraph (2) of Section 273a of the Penal~~
40 ~~Code.~~

~~(C) A conviction of any crime for which the person has not been exonerated and for which the department may not grant an Code, or convicted of any crime for which the department cannot grant an exemption from disqualification pursuant to subdivision (f).~~

(2) The criminal history information shall include the full criminal record, if any, of those persons and *subsequent* arrest information pursuant to Section 11105.2 of the Penal Code.

(3) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant or any other person specified in subdivision (b) who is not exempted from fingerprinting has been convicted of a crime, ~~other than a minor traffic violation, or arrested for a crime specified in subparagraph (B) of paragraph (1), subject to subdivision (e);~~ *other than an infraction*, the application shall be denied, unless the director grants an exemption from disqualification pursuant to subdivision (f).

(B) If the department finds that the applicant, or any other person specified in subdivision (b) who is not exempted from fingerprinting, is awaiting trial for a crime other than a minor traffic violation, the department may cease processing the application until the conclusion of the trial or other disposition of the case.

(C) If no criminal history information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(D) If the department finds after licensure or the issuance of a special permit that the licensee, special permitholder, or any other person specified in subdivision (b) who is not exempt from fingerprinting, has been convicted of a crime other than ~~a minor traffic violation or arrested for a crime specified in subparagraph (B) of paragraph (1), subject to subdivision (e);~~ *the license or an infraction, the license or an infraction, the license or* special permit may be revoked, unless the director grants an exemption pursuant to subdivision (f).

(E) In addition to the criminal records search required by this subdivision, an applicant for licensure or for a special permit shall submit a second set of fingerprints to the Department of Justice, for the purpose of searching the records of the Federal Bureau of

1 Investigation. If an applicant meets all other conditions for
2 licensure or for a special permit, except for the State Department
3 of Social Services' receipt of the Federal Bureau of Investigation's
4 criminal history information for the applicant, the department
5 ~~may~~ *may, but is not required to*, issue a license or special permit
6 if the applicant has signed and submitted a declaration, under
7 penalty of perjury, that he or she has never been convicted of a
8 crime in the United States, ~~other than a traffic infraction as defined~~
9 ~~in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle~~
10 ~~Code, or arrested for a crime specified in subparagraph (B) of~~
11 ~~paragraph (1). If, States, other than an infraction. If,~~ after licensure
12 or the issuance of a special permit, the department determines,
13 based on the results from the Federal Bureau of Investigation's
14 criminal record search that the licensee or special permitholder has
15 a conviction for any crime other than a ~~minor traffic violation, or~~
16 ~~has been arrested for a crime specified in subparagraph (B) of~~
17 ~~paragraph (1), subject to subdivision (c), the an infraction, the~~
18 department may revoke the license pursuant to Section 1569.50.
19 The department may also suspend the license pending an
20 administrative hearing pursuant to Sections 1569.50 and 1569.51.
21 (F) In addition to the criminal records search required by this
22 subdivision, each person specified in subdivision (b) who is not
23 exempted from fingerprinting shall submit a second set of
24 fingerprints to the Department of Justice for the purpose of
25 searching the criminal records of the Federal Bureau of
26 Investigation for records for that person. If any person specified
27 in subdivision (b) who is not exempted from fingerprinting obtains
28 either a criminal record clearance from the Department of Justice
29 or an exemption from disqualification pursuant to subdivision (f)
30 from the State Department of Social Services pending the
31 department's receipt of the Federal Bureau of Investigation's
32 criminal history for the person, the department ~~may~~ *may, but is not*
33 *required to*, allow that person to be employed by, to reside at, or
34 to be present in the residential care facility for the elderly if the
35 person has signed and submitted a declaration, under penalty of
36 perjury, that he or she has never been convicted of a crime in the
37 United States, ~~other than a minor traffic infraction punishable~~
38 ~~pursuant to paragraph (1) of subdivision (a) of Section 42001 of~~
39 ~~the Vehicle Code or the crime for which the exemption from~~
40 ~~disqualification was granted, or arrested for a crime specified in~~

~~subparagraph (B) of paragraph (1).~~ *an infraction*. If after obtaining a criminal record clearance or exemption for a person specified in subdivision (b) who is not exempted from fingerprinting, the department determines, based on the results from the Federal Bureau of Investigation's criminal record search, that the person has a conviction for any crime other than ~~a minor traffic violation, or has been arrested for a crime specified in subparagraph (B) of paragraph (1), subject to subdivision (e), the~~ *an infraction, the* department shall determine if the person should be removed or excluded, or both, from the facility pursuant to paragraph (3) of subdivision (c) until a decision on the exemption from disqualification is rendered.

(G) If, after licensure or the granting of a special permit, the department determines that the licensee, special permitholder, or a person specified in subdivision (b) who is not exempted from fingerprinting has a conviction of an offense other than ~~a minor traffic violation, or a record of arrest for any crime specified in subparagraph (B) of paragraph (1), subject to subdivision (e), the~~ *an infraction, the* license may be revoked pursuant to Section 1569.50 *or the person may be excluded from the facility pursuant to Section 1569.58*. The department may also suspend the license pending an administrative hearing pursuant to Sections 1569.50 and 1569.51.

(b) (1) In addition to the applicant, the provisions of this section shall apply to criminal convictions and arrests of the following persons:

(A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a client, residing in the facility. Residents of unlicensed independent senior housing facilities that are located in contiguous buildings on the same property as a residential care facility for the elderly shall be exempt from these requirements.

(C) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and

1 certified home health aide who will be providing client assistance
2 and who falls under this exemption shall provide one copy of his
3 or her current certification, prior to providing care, at the
4 residential care facility for the elderly. The facility shall maintain
5 the copy of the certification on file as long as the care is being
6 provided by the certified nurse assistant or certified home health
7 aide at the facility. Nothing in this paragraph restricts the right of
8 the department to exclude a certified nurse assistant or certified
9 home health aide from a licensed residential care facility for the
10 elderly pursuant to Section 1569.58.

11 (D) Any staff person, volunteer, or employee who has contact
12 with the clients.

13 (E) If the applicant is a firm, partnership, association, or
14 corporation, the chief executive officer or other person serving in
15 a similar capacity.

16 (F) Additional officers of the governing body of the applicant
17 or other persons with a financial interest in the applicant, as
18 determined necessary by the department by regulation. The
19 criteria used in the development of these regulations shall be based
20 on the person's capability to exercise substantial influence over the
21 operation of the facility.

22 (2) The following persons are exempt from requirements
23 applicable under paragraph (1):

24 (A) A spouse, relative, significant other, or close friend of a
25 client shall be exempt if this person is visiting the client or provides
26 direct care and supervision to that client only.

27 (B) A volunteer to whom all of the following apply:

28 (i) The volunteer is at the facility during normal waking hours.

29 (ii) The volunteer is directly supervised by the licensee, special
30 permitholder, or a facility employee with a criminal record
31 clearance or exemption.

32 (iii) The volunteer spends no more than 16 hours per week at
33 the facility.

34 (iv) The volunteer does not provide clients with assistance in
35 dressing, grooming, bathing, or personal hygiene.

36 (v) The volunteer is not left alone with clients in care.

37 (C) A third-party contractor retained by the facility if the
38 contractor is not left alone with clients in care.

39 (D) A third-party contractor or other business professional
40 retained by a client and at the facility at the request or by

1 permission of that client. These individuals shall not be left alone
2 with other clients.

3 (E) Licensed or certified medical professionals are exempt
4 from fingerprint and criminal background check requirements
5 imposed by community care licensing. This exemption shall not
6 apply to a person who is a residential care facility for the elderly
7 licensee, special permitholder, or an employee of the facility.

8 (F) Employees of licensed home health agencies and members
9 of licensed hospice interdisciplinary teams who have contact with
10 a resident of a residential care facility at the request of the resident
11 or resident's legal decisionmaker are exempt from fingerprint and
12 criminal background check requirements imposed by community
13 care licensing. This exemption shall not apply to a person who is
14 a residential care facility for the elderly licensee, special
15 permitholder, or an employee of the facility.

16 (G) Clergy and other spiritual caregivers who are performing
17 services in common areas of the residential care facility, or who are
18 advising an individual resident at the request of, or with
19 permission of, the resident, are exempt from fingerprint and
20 criminal background check requirements imposed by community
21 care licensing. This exemption shall not apply to a person who is
22 a residential care facility for the elderly licensee, special
23 permitholder, or an employee of the facility.

24 (H) Any person similar to those described in this subdivision,
25 as defined by the department in regulations.

26 (3) Nothing in paragraph (2) shall prevent a licensee or special
27 permitholder from requiring a criminal record clearance of any
28 individual exempt from the requirements of this section, provided
29 that the individual has client contact.

30 (c) (1) (A) Any person required to be fingerprinted pursuant
31 to subdivision (b) shall obtain either a criminal record clearance
32 from the Department of Justice or an exemption from
33 disqualification pursuant to subdivision (f) from the State
34 Department of Social Services prior to his or her initial presence
35 in a residential care facility for the elderly. Any person specified
36 in subdivision (b) who is not exempted from fingerprinting shall
37 be fingerprinted and shall sign a declaration, under penalty of
38 perjury, regarding any prior criminal conviction or any arrest for
39 any crime specified in subparagraph (B) of paragraph (1) of
40 subdivision (a). conviction. The licensee or special permitholder

1 shall submit these fingerprints, along with a second set of
2 fingerprints for the purpose of searching the records of the Federal
3 Bureau of Investigation, to the Department of Justice, or shall
4 comply with paragraph (1) of subdivision (g).

5 (B) These fingerprints shall be in a form required by the State
6 Department of Social Services, or sent by electronic transmission
7 in a manner approved by the State Department of Social Services
8 and the Department of Justice and submitted to the Department of
9 Justice by the licensee. A licensee's or special permitholder's
10 failure to prohibit the initial presence in a facility of any person
11 specified in subdivision (b) who is not exempted from
12 fingerprinting and who has not received either a criminal record
13 clearance or an exemption from disqualification pursuant to
14 subdivision (f) shall result in the citation of a deficiency and the
15 immediate assessment of civil penalties, by the State Department
16 of Social Services and against the licensee or special permitholder,
17 in the amount of one hundred dollars (\$100) per violation per day,
18 *for a maximum of 50 days*, and shall also be grounds for
19 disciplining the licensee pursuant to Section 1569.50. A licensee's
20 or special permitholder's failure to submit fingerprints to the
21 Department of Justice, or to comply with paragraph (1) of
22 subdivision (g), as required in this section, shall result in the
23 citation of a deficiency and an immediate assessment of civil
24 penalties, by the State Department of Social Services and against
25 the licensee or special permitholder, in the amount of one hundred
26 dollars (\$100) per violation per day, *for a maximum of 50 days*, and
27 shall be grounds for disciplining the licensee pursuant to Section
28 1569.50. The department may also assess civil penalties for
29 continued violations as permitted by Section 1569.49.
30 Documentation of the individual's clearance or exemption shall be
31 maintained by the licensee or special permitholder and shall be
32 available for inspection. The Department of Justice shall notify the
33 department, as required by that section, and notify the licensee or
34 special permitholder by mail within 14 days of electronic
35 transmission of the fingerprints to the Department of Justice, if the
36 person has no criminal history information. A violation of the
37 regulations adopted pursuant to Section 1522.04 shall result in the
38 citation of a deficiency and an immediate assessment of civil
39 penalties, by the State Department of Social Services and against
40 the licensee or special permitholder, in the amount of one hundred

dollars (\$100) per violation per day, *for a maximum of 50 days*, and shall be grounds for disciplining the licensee pursuant to Section 1569.50. The department may also assess civil penalties for continued violations as permitted by Section 1569.49.

(2) Within 14 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in this subdivision. If no criminal history information has been recorded, the Department of Justice shall provide the licensee or special permitholder and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprints, notify the licensee or special permitholder that the fingerprints are required.

(3) Except for persons specified in subdivision (b) as exempt from the criminal record clearance requirement, the licensee or special permitholder shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under subdivision (b). If the State Department of Social Services determines, on the basis of the fingerprints submitted to the Department of Justice, that subsequent to obtaining either a criminal record clearance or exemption from disqualification pursuant to subdivision (f), the person has been convicted of a sex offense against a minor, an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a ~~felony, or has been arrested for any crime specified in subparagraph (B) of paragraph (1) of subdivision (a), subject to subdivision (e), felony~~, the State Department of Social Services shall notify the licensee or special permitholder in writing within 15 calendar days of the receipt of the notification from the Department of Justice to act immediately to terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the residential care facility for the elderly, as appropriate. The department may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime, except a ~~minor traffic violation, for an infraction~~, the licensee or special permitholder shall, upon notification by the department, act immediately to either (A) terminate the person's employment, remove the person from the residential care facility for the elderly,

1 or bar the person from entering the residential care facility for the
2 elderly, as appropriate; or (B) seek an exemption pursuant to
3 subdivision (f). The department shall determine if the person shall
4 be allowed to remain in the facility until a decision on the
5 exemption is rendered by the department. A licensee's or special
6 permit holder's failure to comply with the department's
7 prohibition of employment, contact with clients, or presence in the
8 facility as required by this paragraph shall result in a citation of a
9 deficiency and an immediate assessment of civil penalties, by the
10 department and against the licensee or special permitholder, in the
11 amount of one hundred dollars (\$100) per violation per ~~day~~ *day*,
12 *for a maximum of 50 days*, and shall be grounds for disciplining the
13 licensee pursuant to Section 1569.50.

14 (4) The department may issue an exemption on its own motion
15 pursuant to subdivision (f) if the person's criminal history
16 indicates that the person is of good character based on the age,
17 seriousness, and frequency of the conviction or convictions. The
18 department, in consultation with interested parties, shall develop
19 regulations to establish the criteria to grant an exemption from
20 disqualification pursuant to this paragraph.

21 (5) Only an applicant for licensure or a special permit or a
22 licensee or special permitholder may request an exemption
23 pursuant to subdivision (f) on behalf of an individual specified in
24 subdivision (b) who is not exempt from fingerprinting.

25 (d) (1) For purposes of this section or any other provision of
26 this chapter, a conviction means a plea or verdict of guilty or a
27 conviction following a plea of nolo contendere. Any action that the
28 department is permitted to take following the establishment of a
29 conviction may be taken when the time for appeal has elapsed,
30 when the judgment of conviction has been affirmed on appeal, or
31 when an order granting probation is made suspending the
32 imposition of the sentence, notwithstanding a subsequent order
33 pursuant to the provisions of Sections 1203.4 and 1203.4a of the
34 Penal Code permitting a person to withdraw his or her plea of
35 guilty and to enter a plea of not guilty, or setting aside the verdict
36 of guilty, or dismissing the accusation, information, or indictment.
37 For purposes of this section or any other provision of this chapter,
38 the record of a conviction, or a copy thereof certified by the clerk
39 of the court or by a judge of the court in which the conviction
40 occurred, shall be conclusive evidence of the conviction. For

1 purposes of this section or any other provision of this chapter, the
2 arrest disposition report certified by the Department of Justice or
3 documents admissible in a criminal action pursuant to Section
4 969b of the Penal Code shall be prima facie evidence of the
5 conviction, notwithstanding any other provision of law
6 prohibiting the admission of these documents in a civil or
7 administrative action.

8 (2) For purposes of this section or any other provision of this
9 chapter, the department shall consider criminal convictions from
10 another state or federal court or arrests from another state or by any
11 federal agency, as if the criminal offense was committed in this
12 state.

13 (e) The State Department of Social Services shall not use a
14 record of arrest to deny, revoke, or terminate any application,
15 license, special permit, employment, or residence unless the
16 department investigates the incident and secures evidence,
17 whether or not related to the incident of arrest, that is admissible
18 in an administrative hearing to establish conduct by the person that
19 may pose a risk to the health and safety of any person who is or may
20 become a client. The department is authorized to obtain any arrest
21 or conviction records or reports from any law enforcement agency
22 as necessary to the performance of its duties to inspect, license,
23 issue a special permit for, and investigate residential care facilities
24 for the elderly and individuals associated with a residential care
25 facility for the elderly.

26 (f) (1) After review of the record, the director may grant an
27 exemption from disqualification for a license as specified in
28 subdivision (a), or for employment, residence, or presence in a
29 residential care facility for the elderly as specified in subdivision
30 (c), if the director has substantial and convincing evidence to
31 support a reasonable belief that the applicant or other person
32 convicted of, ~~or arrested for,~~ the crime is of such good character
33 as to justify issuance of the license or special permit or granting an
34 exemption pursuant to this subdivision. However, no exemption
35 shall be granted pursuant to this subdivision if the conviction was
36 for any of the following offenses:

37 (A) An offense specified in Section 220, subdivision (b) of
38 Section 237, Section 243.4, Section 246, Section 264.1, Section
39 266a, Section 266e, Section 273a, Section 273ab, Section 273d,
40 subdivision (e) of Section 273.5, Section 288, or Section 289 of the

~~Penal Code, any conviction for which the person is required to register as a sex offender pursuant to Section 290 of the Penal Code, any offense listed in Section 290 of the Penal Code, any conviction for which a court ordered the individual to register as a sex offender pursuant to Section 290 of the Penal Code, Section 368, or subdivision (b) of Section 417, of the Penal Code, a conviction of any crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code, or any crime of violence specified in any regulation.~~

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, or subdivision (a) of Section 451 of the Penal Code.

(C) An offense specified in Section 11379.6.

~~(D) First degree burglary specified in Sections 459 and 460 of the Penal Code. burglary.~~

(2) The director shall notify in writing the licensee, special permitholder, or applicant of his or her decision within 60 days of receipt of all information from the applicant and other sources determined necessary by the director for the rendering of a decision pursuant to this subdivision.

(3) The department shall not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1569.58.

(g) (1) For purposes of compliance with this section, the State Department of Social Services may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be submitted in writing to the department, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee or special permitholder, who shall enclose a self-addressed stamped envelope for this purpose, the department shall verify whether the individual has a clearance that can be transferred.

(2) The department shall hold criminal record clearances in its active files for a minimum of two years after a person is no longer employed by, residing at, or present in a licensed facility in order for the criminal record clearances to be transferred under this section.

(h) If a licensee, special permitholder, or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the department that the employee has a prior criminal conviction, or an arrest for any crime specified in subparagraph (B) of paragraph (1) of subdivision (a), or is determined unsuitable for employment under Section 1569.58, the licensee, special permitholder, or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

SEC. 4. Section 1596.871 of the Health and Safety Code is amended to read:

1596.871. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a child care center or family child care home. Therefore, the Legislature supports the use of the fingerprint live-scan technology, as defined in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with child day care facility clients may pose a risk to the children's health and safety.

(a) (1) Before issuing a license or special permit to any person to operate or manage a child ~~day care facility or family day care home~~ licensed pursuant to this chapter, and before any person specified in subdivision (b) who is not exempted from fingerprinting is employed by, resides at, or is present in a child ~~day care facility or family day care home~~, ~~the department shall~~ *care facility, the department shall* secure from an appropriate law enforcement agency criminal history information to determine whether the applicant or any other person specified in subdivision

(b) who is not exempted from fingerprinting has ~~any of the following:~~

~~(A) A conviction of a crime other than a minor traffic violation.~~

~~(B) An arrest ever been convicted of any crime other than an infraction, or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5 of the Penal Code, for violating subdivision (b) of Section 273a of the Penal Code, or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code.~~

~~(C) A conviction of any crime for which the person has not been exonerated for which the department may not grant an Code, or convicted of any crime for which the department cannot grant an exemption from disqualification pursuant to subdivision (f).~~

(2) The criminal history information shall include the full criminal record, if any, of those persons and *subsequent* arrest information pursuant to Section 11105.2 of the Penal Code.

(3) No fee shall be charged by the Department of Justice or the department for the fingerprinting of an applicant who will serve six or fewer children or any ~~family day~~ *child* care home applicant for a license or special permit, or for obtaining a criminal record of an applicant pursuant to this section.

(4) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant or any other person specified in subdivision (b) who is not exempted from fingerprinting has been convicted of a crime, ~~other than a minor traffic violation, or arrested for a crime specified in subparagraph (B) of paragraph (1), subject to subdivision (e), other than an infraction,~~ the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).

(B) If the department finds that the applicant, or any other person specified in subdivision (b) who is not exempted from fingerprinting, is awaiting trial for a crime other than ~~a minor traffic violation,~~ *an infraction*, the department may cease processing the application until the conclusion of the trial or other disposition of the case.

(C) If no criminal history information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(D) If the department finds after licensure or the issuance of a special permit that the licensee, special permitholder, or any other person specified in subdivision (b) who is not exempted from fingerprinting, has been convicted of a crime other than a ~~minor traffic violation, or arrested for a crime specified in subparagraph (B) of paragraph (1), subject to subdivision (e), the license or an~~ *infraction, the license or* special permit may be revoked, unless the director grants an exemption pursuant to subdivision (f).

(E) In addition to the criminal records search required by this subdivision, an applicant for licensure or for a special permit shall submit a second set of fingerprints to the Department of Justice, for the purpose of searching the records of the Federal Bureau of Investigation. If an applicant meets all other conditions for licensure or for a special permit, except for the State Department of Social Services' receipt of the Federal Bureau of Investigation's criminal history information for the applicant, the department ~~may~~ *may, but is not required to,* issue a license or special permit if the applicant has signed and submitted a declaration, under penalty of perjury, that he or she has never been convicted of a crime in the United States, ~~other than a traffic infraction punishable pursuant to paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code, or arrested for a crime specified in subparagraph (B) of paragraph (1).~~ If, after licensure or the *States, other than an infraction. If, after licensure or the* issuance of a special permit, the department determines, based on the results from the Federal Bureau of Investigation's criminal record search, that the licensee or special permitholder has a conviction for any crime other than ~~a minor traffic violation, or has been arrested for a crime specified in subparagraph (B) of paragraph (1), subject to subdivision (e), the~~ *department may an infraction, the department may* revoke the license pursuant to Section 1596.885. The department may also suspend the license pending an administrative hearing pursuant to Section 1596.886.

(F) In addition to the criminal records search required by this subdivision, each person specified in subdivision (b) who is not exempted from fingerprinting shall submit a second set of fingerprints to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation records for that person. If any person specified in

1 subdivision (b) who is not exempted from fingerprinting obtains
2 either a criminal record clearance from the Department of Justice
3 or an exemption from disqualification pursuant to subdivision (f)
4 from the State Department of Social Services pending the
5 department's receipt of the Federal Bureau of Investigation's
6 criminal history for the person, the department may allow that
7 person to be employed by, reside at, or be present in the child day
8 care facility ~~or family day care home~~ if the person has signed and
9 submitted a declaration, under penalty of perjury, that he or she has
10 never been convicted of a crime in the United States, other than a
11 ~~minor traffic infraction punishable pursuant to paragraph (1) of~~
12 ~~subdivision (a) of Section 42001 of the Vehicle Code or the crime~~
13 ~~for which the exemption from disqualification was granted, or~~
14 ~~arrested for a crime specified in subparagraph (B) of paragraph (1).~~
15 *an infraction.* If after obtaining a criminal record clearance or
16 exemption for a person specified in subdivision (b) who is not
17 exempted from fingerprinting, the department determines, based
18 on the results from the Federal Bureau of Investigation's criminal
19 record search, that a person specified in subdivision (b) who is not
20 exempted from fingerprinting has a conviction for any crime other
21 than a ~~minor traffic violation, or has been arrested for a crime~~
22 ~~specified in subparagraph (B) of paragraph (1), subject to~~
23 ~~subdivision (e), the~~ *an infraction, the* department shall determine
24 if the person should be removed ~~or excluded, or both, from the~~
25 ~~child day care facility or family day care home~~ *from the child care*
26 *facility* pursuant to paragraph (2) of subdivision (c) until a decision
27 on the exemption from disqualification is rendered.

28 (G) If, after licensure or the issuance of a special permit, the
29 department determines that the licensee or special permitholder or
30 person specified in subdivision (b) who is not exempted from
31 fingerprinting has a ~~conviction of an offense other than a minor~~
32 ~~traffic violation or a record of arrest for any crime specified in~~
33 ~~subparagraph (B) of paragraph (1), subject to subdivision (e);~~
34 *criminal record, the license may be revoked pursuant to Section*
35 *1596.885, or the person may be excluded from the facility*
36 *pursuant to Section 1596.8712.* The department may also suspend
37 the license pending an administrative hearing pursuant to Section
38 1596.886.

(b) (1) In addition to the applicant, this section shall be applicable to criminal convictions and arrests of the following persons:

(A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a child, residing in the facility.

(C) Any person who provides care and supervision to the children.

(D) Any staff person, volunteer, or employee who has contact with the children.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer, other person serving in like capacity, or a person designated by the chief executive officer as responsible for the operation of the child day care facility or family day care home, care facility, as designated by the applicant agency.

(F) If the applicant is a local educational agency, the president of the governing board, the school district superintendent, or a person designated to administer the operation of the facility, as designated by the local educational agency.

(G) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(2) The following persons are exempt from the requirements applicable under paragraph (1):

(A) A volunteer providing time-limited specialized services shall be exempt from the requirements of this subdivision if this person is directly supervised by the licensee, special permitholder, or a child day care facility or family day care home employee with or a child care facility employee with a criminal record clearance or exemption, the volunteer spends no more than 16 hours per week at the child day care facility or family day care home, care facility, and the volunteer is not left alone with children in care.

(B) A student enrolled or participating at an accredited educational institution shall be exempt from the requirements of this subdivision if the student is directly supervised by the licensee,

1 special permitholder, or a child ~~day care facility or family day care~~
2 ~~home care facility~~ employee with a criminal record clearance or
3 exemption, the child ~~day care facility or family day care home care~~
4 ~~facility~~ has an agreement with the educational institution
5 concerning the placement of the student, the student spends no
6 more than 16 hours per week at the ~~child day care facility or family~~
7 ~~day care home, and the student is child care facility, and the student~~
8 is not left alone with children in care.

9 (C) A volunteer who is a relative, legal guardian, or foster
10 ~~parent of a client in the child day care facility or family day care~~
11 ~~home shall be exempt from the requirements of this subdivision.~~
12 ~~parent of a child in the child care facility.~~

13 (D) A contracted repair person retained by the child ~~day care~~
14 ~~facility or family day care home, care facility,~~ if not left alone with
15 children in ~~care, shall be exempt from the requirements of this~~
16 ~~subdivision.~~ *care.*

17 (E) Any person similar to those described in this subdivision,
18 as defined by the department in regulations.

19 (F) Employees of child care and development programs under
20 contract with the State Department of Education who have
21 completed a criminal records clearance as part of an application to
22 the Commission on Teacher Credentialing, and who possess a
23 current credential or permit issued by the commission, including
24 employees of child care and development programs that serve both
25 children subsidized under, and children not subsidized under, a
26 State Department of Education contract. The Commission on
27 Teacher Credentialing shall notify the department upon revocation
28 of a current credential or permit issued to an employee of a child
29 care and development program under contract with the State
30 Department of Education.

31 (G) Employees of a child care and development program
32 operated by a school district, county office of education, or
33 community college district under contract with the State
34 Department of Education who have completed a criminal record
35 clearance as a condition of employment. The school district,
36 county office of education, or community college district upon
37 receiving information that the status of an employee's criminal
38 record clearance has changed shall submit that information to the
39 department.

(3) Nothing in this subdivision shall prevent a licensee or special permitholder from requiring a criminal record clearance of any individuals exempt from the requirements under this subdivision.

(c) (1) (A) Any person specified in subdivision (b) who is not exempted from fingerprinting shall obtain, prior to his or her initial presence in a ~~child day care facility or family day care home, care facility,~~ either a criminal record clearance from the Department of Justice or an exemption from disqualification pursuant to subdivision (f) from the State Department of Social Services. Any person specified in subdivision (b) who is not exempted from fingerprinting shall be fingerprinted and shall sign a declaration, under penalty of perjury, regarding any prior criminal ~~conviction or any arrest for any crime specified in subparagraph (B) of paragraph (1) of subdivision (a).~~ *conviction. The licensee or special permit holder* shall submit these fingerprints to the Department of Justice, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, or shall comply with paragraph (1) of subdivision (h).

(B) These fingerprints shall be in a form required by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints and submitted to the Department of Justice by the licensee or sent by electronic transmission in a manner approved by the State Department of Social Services. A licensee's or special permitholder's failure to prohibit the initial presence in a *child care* facility of any person specified in subdivision (b) who is not exempted from fingerprinting and who has not received either a criminal record clearance or an exemption from disqualification pursuant to subdivision (f) shall result in a citation of a deficiency and the immediate assessment of civil penalties, by the department and against the licensee or special permitholder, in the amount of one hundred dollars (\$100) per violation per day, *for a maximum of 50 days*, and shall be grounds for disciplining the licensee pursuant to Section 1596.885 or 1596.886. A licensee's or special permitholder's failure to submit fingerprints to the Department of Justice, or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency, by the State Department of Social Services and against the licensee or special permitholder,

1 and an immediate assessment of civil penalties in the amount of
2 one hundred dollars (\$100) per violation per ~~day~~ *day, for a*
3 *maximum of 50 days*, and shall be grounds for disciplining the
4 licensee pursuant to Section 1596.885 or 1596.886. The State
5 Department of Social Services may assess civil penalties for
6 continued violations permitted by Sections 1596.99 and 1597.62.
7 The fingerprints shall then be submitted to the Department of
8 Justice for processing. Within 14 calendar days of the receipt of the
9 fingerprints, the Department of Justice shall notify the State
10 Department of Social Services of the criminal history information,
11 as provided in this subdivision. If no criminal history information
12 has been recorded, the Department of Justice shall provide the
13 licensee or special permitholder and the State Department of
14 Social Services with a statement of that fact within 14 calendar
15 days of receipt of the fingerprints. If new fingerprints are required
16 for processing, the Department of Justice shall, within 14 calendar
17 days from the date of receipt of the fingerprints, notify the licensee
18 that the fingerprints are required.

19 (C) Documentation of the individual's clearance or exemption
20 from disqualification pursuant to subdivision (f) shall be
21 maintained by the licensee or special permitholder, and shall be
22 available for inspection. The Department of Justice shall notify the
23 department, as required by Section 1522.04, and shall notify the
24 licensee or special permitholder, by mail within 14 days of
25 electronic transmission of the fingerprints to the Department of
26 Justice, if the person has no criminal history. Any violation of the
27 regulations adopted pursuant to Section 1522.04 shall result in the
28 citation of a deficiency and an immediate assessment of civil
29 penalties, by the State Department of Social Services and against
30 the licensee or special permitholder, in the amount of one hundred
31 dollars (\$100) per violation per day, *for a maximum of 50 days*, and
32 shall be grounds for disciplining the licensee pursuant to Section
33 1596.885 or 1596.886. The department may assess civil penalties
34 for continued violations, as permitted by Sections 1596.99 and
35 1597.62.

36 (2) Except for persons specified in subdivision (b) who are not
37 exempted from fingerprinting, the licensee or special
38 permitholder shall endeavor to ascertain the previous employment
39 history of persons required to be fingerprinted under subdivision
40 (b). If it is determined by the department, on the basis of

1 fingerprints submitted to the Department of Justice, that
 2 subsequent to obtaining either a criminal record clearance or
 3 exemption from disqualification pursuant to subdivision (f), the
 4 person has been convicted of a sex offense against a minor, an
 5 offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the
 6 Penal Code, or a felony, ~~or has been arrested for any crime~~
 7 ~~specified in subparagraph (B) of paragraph (1) of subdivision (a),~~
 8 ~~subject to subdivision (e);~~ the State Department of Social Services
 9 shall notify the licensee or special permitholder to act immediately
 10 to terminate the person's employment, remove the person from the
 11 ~~child day care facility or family day care home, care facility,~~ or bar
 12 the person from entering the ~~child day care facility or family day~~
 13 ~~care home, as appropriate. care facility.~~ The department may
 14 subsequently grant an exemption from disqualification pursuant to
 15 subdivision (f). If the conviction was for another crime except a
 16 ~~minor traffic violation, for an infraction,~~ the licensee or special
 17 permitholder shall, upon notification by the department, act
 18 immediately to either (A) terminate the person's employment,
 19 remove the person from the ~~child day care facility or family day~~
 20 ~~care home, care facility,~~ or bar the person from entering ~~the child~~
 21 ~~day care facility or family day care home, as appropriate; the child~~
 22 ~~care facility,~~ or (B) seek an exemption pursuant to subdivision (f).
 23 The department shall determine if the person shall be allowed to
 24 ~~remain in the child day care facility or family day care home until~~
 25 ~~a in the child care facility until a~~ decision on the exemption from
 26 disqualification pursuant to subdivision (f) is rendered. A
 27 licensee's or special permitholder's failure to comply with the
 28 department's prohibition of employment, contact with clients, or
 29 presence in the ~~child day care facility or family day care home~~ *care*
 30 *facility* as required by this paragraph shall result in a citation of a
 31 deficiency and an immediate assessment of civil penalties, by the
 32 department and against the licensee or special permitholder, in the
 33 amount of one hundred dollars (\$100) per violation per day, *for a*
 34 *maximum for 50 days,* and shall be grounds for disciplining the
 35 licensee pursuant to Section 1596.885 or 1596.886.

36 (3) The department may issue an exemption on its own motion
 37 pursuant to subdivision (f) if the person's criminal history
 38 indicates that the person is of good character based on the age,
 39 seriousness, and frequency of the conviction or convictions. The
 40 department, in consultation with interested parties, shall develop

1 regulations to establish the criteria to grant an exemption pursuant
2 to this paragraph.

3 (4) Only an applicant for licensure or a special permit or a
4 licensee or special permitholder may request an exemption on
5 behalf of an individual specified in subdivision (b) who is not
6 exempted from fingerprinting.

7 (d) (1) For purposes of this section or any other provision of
8 this chapter, a conviction means a plea or verdict of guilty or a
9 conviction following a plea of nolo contendere. Any action that the
10 department is permitted to take following the establishment of a
11 conviction may be taken when the time for appeal has elapsed,
12 when the judgment of conviction has been affirmed on appeal, or
13 when an order granting probation is made suspending the
14 imposition of sentence, notwithstanding a subsequent order
15 pursuant to Sections 1203.4 and 1203.4a of the Penal Code
16 permitting the person to withdraw his or her plea of guilty and to
17 enter a plea of not guilty, or setting aside the verdict of guilty, or
18 dismissing the accusation, information, or indictment. For
19 purposes of this section or any other provision of this chapter, the
20 record of a conviction, or a copy thereof certified by the clerk of
21 the court or by a judge of the court in which the conviction
22 occurred, shall be conclusive evidence of the conviction. For
23 purposes of this section or any other provision of this chapter, the
24 arrest disposition report certified by the Department of Justice, or
25 documents admissible in a criminal action pursuant to Section
26 969b of the Penal Code, shall be prima facie evidence of
27 conviction, notwithstanding any other provision of law
28 prohibiting the admission of these documents in a civil or
29 administrative action.

30 (2) For purposes of this section or any other provision of this
31 chapter, the department shall consider criminal convictions from
32 another state or federal court, ~~or arrests from another state or by~~
33 ~~any federal agency~~, as if the criminal offense was committed in this
34 state.

35 (e) The State Department of Social Services shall not use a
36 record of arrest to deny, revoke, or terminate any application,
37 license, special permit, employment, or residence unless the
38 department investigates the incident and secures evidence,
39 whether or not related to the incident of arrest, that is admissible
40 in an administrative hearing to establish conduct by the person that

may pose a risk to the health and safety of any person who is or may become a client. The department is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, issue a special permit ~~for, and investigate child day care facilities or family day care homes and individuals associated with a child day care facility or family day care home.~~ *for, and investigate child care facilities and individuals associated with child care facilities.*

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in subdivision (a), or for employment, residence, or presence in a ~~child day care facility or family day care home~~ *care facility* as specified in subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant or other person convicted of, ~~or arrested for,~~ the crime is of good character so as to justify issuance of the license or special permit or granting an exemption pursuant to this subdivision. However, no exemption shall be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) An offense specified in Section 220, subdivision (b) of Section 237, Section 243.4, Section 246, Section 264.1, Section 266a, Section 266e, Section 273a, Section 273ab, Section 273d, subdivision (e) of Section 273.5, Section 288, or Section 289, of the ~~Penal Code, any conviction for which the person is required to register as a sex offender pursuant to Section 290 of the Penal Code, any offense listed in Section 290 of the Penal Code, any conviction for which the court has ordered the person to register as a sex offender pursuant to Section 290 of the Penal Code, Section 368, or subdivision (b) of Section 417, of the Penal Code, a conviction of any crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code, or any crime of violence specified in any regulation.~~

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, or subdivision (a) or (b) of Section 451, of the Penal Code.

(C) An offense specified in Section 11379.6.

(D) ~~First degree burglary specified in Sections 459 and 460 of the Penal Code.~~ *burglary.*

1 (2) The department shall not prohibit a person from being
2 employed or having contact with clients in a child ~~day care facility~~
3 ~~or a family day care home~~ *care facility* on the basis of a denied
4 criminal record exemption request or arrest information unless the
5 department complies with the requirements of Section 1596.8897.

6 (g) Upon request of the licensee or special permitholder, who
7 shall enclose a self-addressed stamped postcard for this purpose,
8 the Department of Justice shall verify receipt of the fingerprints.

9 (h) (1) For the purposes of compliance with this section, the
10 State Department of Social Services may permit an individual to
11 transfer a current criminal record clearance, as defined in
12 subdivision (a), from one child ~~day care facility~~ ~~or family day care~~
13 ~~home~~ *care facility* to another, as long as the criminal record
14 clearance has been processed through a state licensing ~~district~~
15 office, and is being transferred to another child ~~day care facility~~ ~~or~~
16 ~~family day care home~~ *care facility* licensed by a state licensing
17 ~~district~~ office. The request shall be in writing to the department,
18 and shall include a copy of the person's driver's license or valid
19 identification card issued by the Department of Motor Vehicles, or
20 a valid photo identification issued by another state or the United
21 States government if the person is not a California resident. Upon
22 request of the licensee or special permitholder, who shall enclose
23 a self-addressed stamped envelope for this purpose, the
24 department shall verify whether the individual has a clearance that
25 can be transferred.

26 (2) The department shall hold criminal record clearances in its
27 active files for a minimum of two years after a person is no longer
28 employed by, residing at, or present in a licensed child ~~day care~~
29 ~~facility or family day care home~~ *care facility* in order for the
30 criminal record clearances to be transferred.

31 SEC. 5. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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